



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WTB Docket No. 21-333; DA 22-300; FR ID 86867]

Procedures for Appeals of Relocation Payment Clearinghouse Decisions

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) establishes procedures for the filing and processing of challenges to decisions made by the C-band Relocation Payment Clearinghouse (Clearinghouse) pursuant to the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification (3.7 GHz Report and Order)*. This document clarifies that before the Bureau will consider an appeal of a Clearinghouse decision, relevant parties must first file an objection with the Clearinghouse as required by the Federal Communications Commission's rules and pursuant to the process established in the Clearinghouse Dispute Resolution Plan (RPC DRP). The Bureau describes the two possible paths pursuant to which an appeal of a Clearinghouse decision can be made to the Bureau, depending on which party or parties submit a timely notice of objection with the Clearinghouse in this document.

DATES: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All documents must be filed in WT Docket No. 21-333, 3.7-4.2 GHz Band Transition Clearinghouse Dispute Referrals and Appeals, in the Commission's Electronic Comment Filing System (ECFS), available at <http://www.fcc.gov/ecfs>. Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal

Communications Commission. Commercial deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service First-Class, Express, and Priority mail must be addressed to 45 L ST NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020) <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changeshand-delivery-policy>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice, 202-418-0432 (tty)).

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at Susan.Mort@fcc.gov or 202-418-2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, in WT Docket No. 21-333; DA 22-300, released on March 21, 2022. The complete text of this document is available on the Commission's website at <https://www.fcc.gov/document/wtb-announces-appeal-procedures-c-band-clearinghouse-decisions>.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will not send a copy of this document to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted action is an action of particular applicability.

SYNOPSIS

With this document, the Wireless Telecommunications Bureau (WTB or Bureau) establishes procedures for the filing and processing of challenges to decisions made by the 3.7-4.2 GHz (C-band) Relocation Payment Clearinghouse (Clearinghouse).

In the *3.7 GHz Report and Order* (85 FR 22804, April 23, 2020), the Commission found that selecting a single, independent clearinghouse to oversee cost-related aspects of the C-band transition in a fair and transparent manner, subject to Commission oversight, would best serve the public interest. Among its duties set forth by the Commission, the Clearinghouse is responsible for making initial determinations about the reasonableness of transition-related cost reimbursement claims. The Clearinghouse also apportions costs among 3.7 GHz Service Licensees and distributes payments to claimants that incur compensable costs. The *3.7 GHz Report and Order* also specified that the Clearinghouse will serve “in an administrative role and in a function similar to a special master in a judicial proceeding” and “may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.” Any unresolved issues relating to Clearinghouse decisions may be appealed to the Bureau.

This document sets forth the procedures by which eligible parties may appeal Clearinghouse decisions to the Bureau. As an initial matter, we clarify that before the Bureau will consider any appeal, the relevant party or parties, whether an eligible incumbent claimant or eligible 3.7 GHz Service Licensee, must first timely file a notice of objection with the Clearinghouse as required by the Commission’s rules and pursuant

to the process established in the Clearinghouse Dispute Resolution Plan (RPC DRP). Interlocutory appeals, before a timely notice of objection is filed with the Clearinghouse, will not be considered by the Bureau.

The RPC DRP identifies different scenarios and timeframes within which eligible parties must file a notice of objection. Specifically, the RPC DRP requires eligible incumbent claimants or eligible 3.7 GHz Service Licensees to file a notice of objection with the Clearinghouse within twenty (20) days of invoice issuance following Clearinghouse review of lump sum or reimbursement claims. Where the eligible incumbent claimant first files a notice of objection to the Clearinghouse's decision on its lump sum or reimbursement claim within the applicable twenty (20) day timeline, and an eligible 3.7 GHz Service Licensee also wishes to be a party to that objection, that eligible 3.7 GHz Licensee must itself file an objection within thirty (30) days of invoice issuance. We clarify that the same approach and timeline will apply in cases where the first notice of objection to a lump sum or reimbursement claim is filed by the eligible 3.7 GHz Service Licensee within the applicable twenty (20) day timeline and the eligible incumbent claimant wishes to be a party to that appeal. In such cases, that eligible incumbent claimant must itself file an objection with the Clearinghouse within thirty (30) days of invoice issuance. Where one or more eligible 3.7 GHz Service Licensees wish to dispute any type of payment or cost sharing decision by the Clearinghouse other than a lump sum or reimbursement claim, they must file an objection within twenty (20) days of statement or invoice issuance. We further clarify that any other eligible 3.7 GHz Service Licensee wishing to be a party to an objection of this type first filed by a different eligible 3.7 GHz Service Licensee must itself file an objection with the Clearinghouse within thirty (30) days of statement or invoice issuance.

There are two possible paths pursuant to which an appeal of a Clearinghouse decision can be made to the Bureau, depending on which party or parties submit a timely

notice of objection with the Clearinghouse. The first path is a single-party dispute where one eligible party (whether an incumbent claimant or 3.7 GHz Service Licensee) files a timely notice of objection with the Clearinghouse and no other eligible party elects to join by filing its own timely notice of objection with the Clearinghouse. The second path is a multi-party dispute where more than one eligible party files a timely notice of objection regarding the same determination with the Clearinghouse, and the mediation and arbitration provisions in § 27.1421(b) of the Commission's rules have already been satisfied (47 CFR 1421(b)). For example, a multi-party dispute could involve both an eligible incumbent claimant or one or more eligible 3.7 GHz Service Licensees in the case of lump sum or reimbursement claim review, or multiple eligible 3.7 GHz Service Licensees where the apportionment of relocation costs is at issue. Below, we detail the specific procedures applicable to each path. In all cases, the requirements (including deadlines) of the *3.7 GHz Report and Order* and this document, and any other requirements established by the Commission or WTB, must be satisfied before the Bureau will consider an appeal.

Single-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is not joined by any other eligible party, the following process applies:

1. The appealing party must directly submit a written appeal to the Bureau seeking review of the Clearinghouse's decision no later than thirty (30) days from the date any other eligible party fails to file a timely notice of objection with the Clearinghouse. While the Clearinghouse should provide notice to the appealing party that no other eligible party has joined its dispute within three (3) business days of such event, we clarify that the appealing party must directly file a written appeal to the Bureau by the requisite thirty (30) day deadline in order for its appeal to be considered by the Bureau.

2. The burden of proof lies on the appealing party to demonstrate in its appeal that the Clearinghouse decision was incorrect. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.
3. The Bureau will issue regular public notices setting pleading cycles for any single-party appeals received in a given week and assigning file numbers to each appeal.
4. The Clearinghouse will automatically be joined as the opposing party to any such appeal and have ten (10) days from the date of any such public notice to respond, including the submission of any decisional paperwork or supporting materials.
5. The appealing party will have five (5) days thereafter for any reply. Filings by third parties are not permitted.
6. All pleadings and documentation relating to an appeal shall be submitted electronically, using the Commission's Electronic Comment Filing System (ECFS) in WT Docket No. 21-333, with a copy thereof served electronically on the Clearinghouse as opposing party. These pleadings and documents must also comply with § 1.49 of the Commission's rules (47 CFR 1.49).
7. The first page of any pleading or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by the Bureau.
8. Any party may request confidential treatment of any document, or portion thereof, pursuant to § 0.459 of the Commission's rules (47 CFR 0.459).
9. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.

Multi-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is joined by at least one other eligible party, the following process applies:

1. Following the filing of timely notices of objection by multiple eligible parties with the Clearinghouse, such parties must first satisfy the mediation and arbitration provisions in § 27.1421(b) of the Commission's rules (47 CFR 27.1421(b)).
2. Should any issues still remain unresolved and the parties have not opted for arbitration pursuant to Section 9 of the RPC DRP, the Clearinghouse may refer the matter to the Bureau within ten (10) days of the recommended decision or advice of the Clearinghouse (qua mediator) or other mediator. Should all parties elect to seek non-binding expedited arbitration, the same ten (10) day timeframe will be applicable to referral of the matter to the Bureau for review following issuance of a recommended decision or advice from the Clearinghouse (qua arbitrator) or other arbitrator.
3. The Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Clearinghouse has considered. The Bureau will rely on the factual record before it as provided by the Clearinghouse.
4. The burden of proof is on each party to demonstrate that their view is correct. All eligible parties that filed timely notices of objection with the Clearinghouse and participated in the underlying mediation or arbitration will automatically be parties to the appeal unless they opt out by providing written notice to the Bureau as set forth below. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.
5. The Bureau will issue a public notice upon receipt of the record from the Clearinghouse and assign a file number to the appeal.
6. Each party has ten (10) days from the date of such public notice to either submit statements of position or opt out of the appeal by providing written notice to the Bureau. Statements shall comply with § 1.49 of the Commission's rules (47 CFR 1.49). Statements must be strictly limited to issues raised in the course of mediation and/or arbitration and facts contained in the record. In their statements, parties may not

introduce facts not contained in the record or introduce arguments on issues that were not presented to the mediator and/or arbitrator for consideration. Any material not conforming to these restrictions will be stricken. Reply filings and filings by third parties are not permitted. The Clearinghouse and any party to the appeal may file other documents or pleadings only if specifically requested by the Commission.

7. Parties' statements, any record documents, and opt out notices shall be submitted electronically, using the Commission's ECFS in WT Docket No. 21-333, with a copy thereof served electronically on any other party to the appeal and the Clearinghouse. These documents must also comply with § 1.49 of the Commission's rules (47 CFR 1.49).

8. The first page of any statement or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by WTB.

9. The Clearinghouse and any party to the appeal may request confidential treatment of any document, or portion thereof, pursuant to § 0.459 of the Commission's rules (27 CFR 0.459).

10. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.

Following a Bureau decision in either a single-party or multi-party dispute, any party to a specific matter wishing to appeal that decision may do so by filing with the Commission, within ten (10) days of the effective date of the Bureau decision, a petition for de novo review, whereupon the Commission will set the matter for an evidentiary hearing before an Administrative Law Judge. Parties seeking de novo review of a decision by the Bureau are advised that, in the course of the evidentiary hearing, the Commission may require complete documentation relevant to any disputed matters, and, where necessary, and at the presiding judge's discretion, require expert engineering, economic, or other reports, or testimony, and that the cost of producing such

documentation is not a reimbursable transition expense. Parties may therefore wish to consider possibly less burdensome and expensive means of resolving their disputes, such as alternative dispute resolution.

A party to any appeal, whether single-party or multi-party, must certify in each submission that it attests to the truthfulness of the information it is providing and is making the submission in good faith. We remind parties of their obligations under § 1.17 of the Commission's rules (47 CFR 1.17), and note that violators will be subject to potential enforcement action. The Bureau will determine a submission has been made in bad faith if, for example, the submitting party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted.

Restricted Proceeding. This docket and each appeal is a "restricted" proceeding under § 1.1208 (47 CFR 1.1208) of the Commission's rules, and thus *ex parte* presentations to or from Commission decision-making personnel, including the Chief and staff of the Wireless Telecommunications Bureau, are prohibited, except as otherwise provided in the Commission's rules.

Federal Communications Commission.

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